Docket No.: 196261US55DIV

RCE/1732
#19
A.U.
4-29-03

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: David J. STUCKY, et al.

| | | | |
|---|---|---|---|
| SERIAL NO: | 09/709,527 | GAU: | 1732 |
| FILED: | November 13, 2000 | EXAMINER: | A. KUHNS |
| FOR: | FOAMED POLYMER-FIBER COMPOSITE | | |

OIPE JC76 APR 23 2003 PATENT & TRADEMARK OFFICE

## REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

RECEIVED APR 28 2003 TC 1700

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

This is a request for Continued Examination (RCE) under 37 C.F.R. §1.114 of the above-identified application.

**Submission required under 37 C.F.R. §1.114**

Previously Submitted:

- ☐ Consider the amendment(s)/reply under 37 C.F.R. §1.116 previously filed on
- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on

Enclosed:

- ■ **Request for Reconsideration**
- ☐ Information Disclosure Statement (IDS)
- ■ Other: **Request for Extension of Time (TWO-MONTH); & Copies of Forms PTO-1449 as filed November 13, 2000 (17 pp.)**

| FEES | RATE | CALCULATIONS |
|---|---|---|
| ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. §1.103(c) for a period of months. | $130.00 | $0.00 |
| ■ RCE Fee required under 37 C.F.R. §1.17(e) | $750.00 | $750.00 |
| ■ **A TWO MONTH EXTENSION OF TIME IS REQUESTED** | | $410.00 |
| ☐ | | $0.00 |
| TOTAL OF ABOVE CALCULATIONS: | | $1,160.00 |
| ☐ REDUCTION BY 50% FOR FILING AS SMALL ENTITY | | $0.00 |
| TOTAL: | | $1,160.00 |

■ A check in the amount of **$1,160.00** is enclosed

■ Please charge any additional Fees for the papers being filed herewith and for which no check is enclosed herewith, or credit any overpayment to Deposit Account No. 15-0030. A duplicate copy of this sheet is enclosed.

■ If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 CFR 1.136, and any additional fees required under 37 CFR 1.136 for any necessary extension of time may be charged to Deposit Account No. 15-0030. A duplicate of this sheet is enclosed.

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Respectfully Submitted,

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#20 N.L.H 4-29-03

DOCKET NO.: 196261US55DIV

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

IN RE APPLICATION OF: :

DAVID J. STUCKY, et al. :GROUP ART UNIT: 1732

SERIAL NO.: 09/709,527 :

FILED: NOVEMBER 13, 2000 :EXAMINER: A. KUHNS

FOR: FOAMED POLYMER-FIBER COMPOSITE

**REQUEST FOR RECONSIDERATION**

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

Responsive to the Advisory Action dated December 18, 2002, and accompanied by a Request for Continued Examination as well as a Request for Extension of Time and the appropriate fees, Applicants respectfully request reconsideration of the above-identified application in view of the following remarks.

**REQUEST FOR RECONSIDERATION**

Claims 15-17, 21 and 23 are active.

Applicants wish to thank Examiner Kuhns for his helpful and courteous telephone discussion with Applicants' Representative on February 24, 2003. During this discussion it was noted that the combination of Cope and Ansted does not disclose or suggest the claimed method of forming a foamed composite building material, comprising:

(a) compounding

about one hundred parts **polyvinylchloride**;

about 68 parts to about 100 parts fiber per hundred parts polyvinylchloride, and

about 1.0 to about 1.5 parts of a blowing agent per hundred parts of polymeric resin,

to form a compounded mixture;

(b) feeding said compounded mixture into an extruder to form a molten mixture; and

(c) extruding said molten mixture through a die;

wherein the foamed composite building material formed thereby has a specific gravity of about 1.07 g/cc or less;

**wherein said foamed composite building material is capable of having a screw fastener countersunk therein without predrilling.**

Cope fails to disclose or suggest that predrilling may be omitted. Ansted only discloses **"self-drilling" of screws to a support plate behind a polyurethane foam** but **not the claimed capability to countersink screws without predrilling into the foamed PVC containing composite building materials.**

Cope discloses a composite of a polymer and wood flour for formation of an extrusion profile (Cope, col. 2, lines 11-13). The polymer comprises PVC, CPVC and polystyrene (Cope, col. 2, lines 26 and 27). However, Cope fails to disclose or suggest that the polymer composite is capable of having a screw fastener countersunk without predrilling.

Ansted discloses a means for attaching a structure to the walls of a refrigeration unit having a thin inner and outer skin with the space in between filled with foam plastic (Ansted, col. 1, lines 38-41). Metal plates contained in the foam plastic are attached by self-drilling screws that will drill through the outer skin, foam plastic and plate **to anchor themselves in**

**the plate** (Ansted, col. 1, lines 56-60). Thus, the screws are not at all anchored in the polyurethane foam. To anchor the screws, a plate is required. The foam merely serves as an insulating layer. In contrast, in the present invention screws can be countersunk in the building material itself without predrilling. However, this is not disclosed or suggested in Ansted.

In addition, Applicants wish to point out that "self-drilling" does not necessarily mean "countersinking." "Self-drilling" refers to the fact that a screw starts itself without a hole having been drilled into the material. "Countersinking" refers to the fact that the heads of the screws bury or at least become flush with a board surface (specification, page 1, last paragraph). Therefore, the fact that the screws in Ansted are "self-drilling" does not mean that they can be countersunk in the board surface without predrilling. Accordingly, the Examiners' assertion that "one of ordinary skill in the art would not doubt the capability of the screws to be countersunk" has no basis. The claimed method of forming a foamed composite building material cannot be obvious over Cope alone or the combination of Cope and Ansted.

Furthermore, as shown in the Rule 132 Declaration by David Stucky filed November 21, 2002, the composition resulting from the present process provides surprising and significant improvements in the ability to countersink a screw when the blowing agent and specific gravity requirements are met. Such a relationship is nowhere disclosed or suggested by Cope. Accordingly, the reference cannot render the claims obvious. Even if the Examiner maintains the position that the reference renders the claims obvious, the data provided in the copy of the Stucky Declaration adequately rebut such an asserted case of obviousness and the rejection should be withdrawn. Furthermore, the Examiner alleges that the screw failure discussed in the Rule 132 Declaration, may include bending, breaking or stripping out of the

material making the data incommensurate in scope with the claims. However, this assertion is unsustainable: if a screw breaks or bends etc. when drilled into the board material it must fail and cannot be countersunk without predrilling. Such screw would be correctly counted as a screw failure.

Finally, the composition as defined in the present method claims is essentially the same as that allowed and issued in the parent application. As such, it's method of production is believed to be allowable as well (In re Ochai, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995)).

Therefore, the rejection of Claims 15-17, 21 and 23 under 35 U.S.C. §103(a) over Cope in view of Ansted is believed to be unsustainable as the present invention is neither anticipated nor obvious and withdrawal of this rejection is respectfully requested.

Applicants respectfully request that the Examiner acknowledge that the references cited in the **Information Disclosure Statement**, filed in the above-identified application on **November 13, 2000**, have been considered. For the Examiner's convenience copies of Forms PTO 1449 as filed on November 13, 2000 is attached herewith. Duplicates have been deleted as requested.

Applicants submit that the present application is now in condition for allowance and early notice of such action is earnestly solicited.

Respectfully submitted,

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